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QUESTION OF THE REALIZATION OF THE RIGHT TO DEVELOPMENT

Progress report of the Intergovernmental Group of Experts on the Right to Development on its first session

(Geneva, 4-15 November 1996)

Chairman-Rapporteur: Mr. Krzysztof Drzewicki (Poland)

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Introduction

1. At its fifty-second session, the Commission on Human Rights, in its resolution 1996/15, reaffirmed that the implementation of the Declaration on the Right to Development required perseverance and concrete efforts and that that dynamic process should be pursued at all appropriate levels, including through the elaboration of international and national strategies, which required the effective contribution of States, organs and organizations of the United Nations system and of non-governmental organizations active in that field.

2. To this end, the Commission on Human Rights decided to establish an intergovernmental group of experts with a mandate to elaborate a strategy for the implementation and promotion of the right to development, as set forth in the Declaration on the Right to Development, in its integrated and multidimensional aspects, bearing in mind the conclusions of the Working Group on the Right to Development, established by the Commission on Human Rights in resolution 1993/22, and the conclusions of the World Conference on Human Rights and of the four World Conferences, 1/ and that:

(a) Such working group would be established for a two-year period;

(b) The working group would elaborate concrete and practical measures for the implementation and promotion of the right to development and submit a progress report to the Commission on Human Rights at its fifty-third session; the working group should focus on the development of such a strategy, which should include recommendations for further practical measures for implementation and promotion, and report to the Commission at its fifty-fourth session;

(c) The members of the working group would be appointed on the basis of equitable geographical representation, in consultation with the regional groups, and of their competence and acquired experience in that field; and urged that they accomplish their mandate;

(d) The working group would be composed of 10 experts, nominated by Governments, to be appointed by the Chairman of the Commission on Human Rights;

(e) The working group experts would be in consultation with the treaty bodies and with the United Nations High Commissioner for Human Rights on all issues relevant to the implementation of the right to development.

3. The present report describes the proceedings of the first session of the Intergovernmental Group of Experts on the Right to Development.

1/ The United Nations Conference on Environment and Development, the International Conference on Population and Development, the World Summit for Social Development and the Fourth World Conference on Women: Action for Equality, Development and Peace.

Opening and duration of the session

4. The first session of the Intergovernmental Group of Experts on the Right to Development was held at the Palais des Nations, Geneva, from 4 to 15 November 1996. The session was opened by the High Commissioner for Human Rights.

Composition of the Working Group and attendance

5. The Intergovernmental Group of Experts on the Right to Development at its first session consisted of the following 10 experts: Mr. Gudmundur Alfredsson (Iceland), Mr. Krzysztof Drzewicki (Poland), Mrs. Margarita Escobar Lopez (El Salvador), Mr. Antonio García Revilla (Peru), Mr. Martin Khor Kok Peng (Malaysia), Mrs. Thérèse Pujolle (France), Mr. Shaheed Rajie (South Africa), Mr. Vladimir Sotirov (Bulgaria), Mr. Cheikh Tidiane Thiam (Senegal), Mr. Bozorgmehr Ziaran (Islamic Republic of Iran).

6. Mr. Sotirov attended the working group from 11 to 15 November 1996. Mr. Rajie attended from 4 to 8 November 1996.

Election of officers

7. At its 1st meeting, the working group elected the following officers:

Chairman-Rapporteur: Mr. Krzysztof Drzewicki (Poland)

Vice-Chairman: Mr. Martin Khor Kok Peng (Malaysia)

Adoption of the agenda

8. At its 1st meeting, on 4 November 1996, the Working Group, on the basis of the provisional agenda (E/CN.4/AC.45/1996/1), adopted the following agenda for its first session:

1. Election of officers

2. Adoption of the agenda

3. Implementation of Commission on Human Rights resolution 1996/15, entitled "The right to development".

Observers

9. Observers from the following States members of the Commission on Human Rights attended the session: Algeria, Austria, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Egypt, El Salvador, Ethiopia, France, Gabon, Germany, Hungary, India, Italy, Japan, Malaysia, Mexico, Nicaragua, Pakistan, Peru, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

10. Observers from the following other States Members of the United Nations attended the session: Albania, Argentina, Czech Republic, Honduras,

Iran (Islamic Republic of), Nigeria, Poland, San Marino, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Spain, Syrian Arab Republic, Thailand, Tunisia, United Republic of Tanzania, Uruguay, Yemen.

11. Representatives of the following United Nations specialized agencies and intergovernmental organizations attended the session: International Labour Organization, International Monetary Fund, Arab Labour Organization.

12. Representatives of the following non-governmental organizations attended the session: International Movement ATD Fourth World, African Association of Education for Development, American Association of Jurists, International Service for Human Rights, Women's International League for Peace and Freedom, Centre Europe-Tiers Monde.

Documentation

13. A list of documents before the working group at its first session is contained in Annex I.

Organization and methods of work

14. With regard to its methods of work, the working group agreed to work in a combination of closed and public meetings in order to facilitate an exchange of views and the drafting process. Subsequently, it decided to establish two smaller drafting groups and appointed three "friends of the Chair" to address the three main sections of the strategy identified by the working group: conceptual framework, aspects of the right to development and concrete and practical measures.

15. The working group held several public meetings to inform Member States, United Nations bodies and agencies, and intergovernmental and non-governmental organizations of progress made in its work, to hold an exchange of views and to receive contributions. The contributions made by observer Governments and international organizations proved to be useful and important. The working group held 7 public meetings and 12 closed meetings.

16. The approach of the working group as a group of experts was to consider both general issues of a conceptual nature relating to the right to development, and more specific and concrete questions relevant to its mandate.

17. In order to promote the debate on the role of the High Commissioner for Human Rights, treaty bodies and specialized agencies in the implementation of the Declaration on the Right to Development, the working group invited to its session the Senior Advisor to the High Commissioner for Human Rights, the Chairman of the Human Rights Committee and a senior officer of the International Labour Organization.

18. The working group decided to ask Governments, United Nations agencies, treaty bodies and competent intergovernmental and non-governmental organizations to submit, during the intersessional period, their views and proposals with regard to concrete and practical measures for the implementation and promotion of the right to development, in the context of the mandate of the working group. The secretariat was asked to transmit the

replies received to the members of the working group in advance of its next session. The working group also entrusted its Chairman with the task of continuing to hold consultations with Governments and organizations during the intersessional period.

Summary of consultations with the Senior Advisor to the High Commissioner for Human Rights

19. At its 5th meeting, on 6 November 1996, the Senior Advisor to the High Commissioner for Human Rights addressed the working group on consultations the High Commissioner had held with the World Bank, as well as with the Executive Secretaries of the regional commissions of the United Nations.

20. With regard to the consultations with the World Bank, the Senior Advisor outlined the various aspects of cooperation which had been discussed: (i) support for the human rights programme in general; (ii) cooperation with a view to introducing human rights considerations into the activities of the World Bank; (iii) development of coordinated activities; (iv) mutual assistance; (v) areas identified for cooperation: (a) establishment of channels for the exchange of information and cooperation in the preparation of country projects; (b) exchange of experience in countries undergoing transition to democracy; (c) cooperation at the level of field offices; (d) national capacity building; (e) human rights education; (f) support for the implementation of specific conventions; (g) a training seminar for staff of the two institutions; (h) support for a regional seminar on the implementation on the right to development in Latin America.

21. With regard to the consultations with the Executive Secretaries of the regional commissions, the Senior Advisor said that seminars would be organized in 1997 by the United Nations human rights programme and the regional commissions in cooperation with UNDP and the World Bank on the implementation of the right to development in Africa, Asia, Europe and Latin America. The focus of the seminars would be the domestic implementation of the right to development and representatives of national planning institutions, experts, including members of the working group and civil society would be invited to attend. Preparations had started for the first seminar, which would be held in Latin America.

Summary of consultations with the Chairman of the Human Rights Committee

22. At the 7th meeting, on 7 November 1996, the Chairman of the Human Rights Committee addressed the working group at the invitation of the experts. During the meeting, the following issues were discussed:

Competence of the Human Rights Committee to deal with issues relating to the implementation of the Declaration on the Right to Development;

Areas of work of the Committee which are of a direct relevance to the right to development;

Specific issues relating to particular human rights set forth in the International Covenant on Civil and Political Rights.

Summary of consultations with the representative of the International Labour Organization

23. At the 12th meeting, on 11 November 1996, the representative of the International Labour Organization (ILO) addressed the working group at the invitation of the experts who wished to obtain more information on current ILO activities relevant to the right to development.

The following issues were discussed:

International labour standards and their enforcement;

Technical cooperation programmes of ILO;

Areas of work of ILO relevant to the right to development;

New standard-setting activities of ILO;

Cooperation between ILO and other agencies and organizations, including the United Nations Children's Fund (UNICEF), the International Monetary Fund (IMF), human rights treaty bodies and the Centre for Human Rights;

ILO working group on social dimensions of the liberalization of trade;

Implementation of the Declaration on the Right to Development through the application of ILO norms and standards.

Summary of preliminary comments made by representatives of Governments after adoption of the present progress report

24. At its 19th and closing meeting, on 15 November 1996, after the adoption of the present progress report of the working group, representatives of the observer Governments of China, Cuba, Egypt, India, Japan, Malaysia, Mexico, Nicaragua and Venezuela took the floor and made preliminary comments on the working methods of the working group and on its progress report. Those comments are summarized as follows:

(a) There is need for in-depth examination of the agents of the prevalent development model, which has profit as a main aim and which goes against a model based on solidarity;

(b) Concerns were expressed relating to the delegation of responsibility, referred to in paragraph 18 of the present report, to the Chairman and the duplication of work resulting from entrusting the same tasks to Governments, United Nations agencies, treaty bodies and competent intergovernmental and non-governmental organizations, to the Chairman and to members of the working group;

(c) With reference to paragraph 32, the major problem facing developing countries is more than simple lack of capacity to compete in markets but rather the lack of adequate international cooperation, recognized

in the Declaration on the Right to Development, without which developing countries will face difficulties in achieving sustainable development to meet increasing social demands and to respect all human rights;

(d) The "tendencies" referred to in paragraph 35 need to be clarified and, in accordance with the mandate of the working group, it should be indicated that it is precisely the lack of the right to development that can pose serious threats to regional stability and to international peace and security;

(e) The implementation of the right to development is a long-term task for which instruments alone are not enough but which requires a concerted effort on the part of the international community and bodies and agencies of the United Nations;

(f) With respect to paragraph 71 there should be continuity with previous work done by human rights bodies, including the previous working group, which have identified the World Bank and IMF, which are not development agencies, as obstacles to the implementation of the right to development;

(g) The proposals contained in paragraphs 106, 107, 109 and 110 go beyond the scope of the mandate of the working group, especially the reference to "national level decentralization", which is an internal matter;

(h) With reference to paragraph 111, the compilation of information on indicators and early warning mechanisms and methods is beyond the scope of the mandate of the working group which relates to promotion and not to preventive mechanisms;

(i) The working group should work in the spirit of consensus that had emerged in the General Assembly and the Commission on Human Rights;

(j) The working group should re-examine its methods of work to ensure more transparency and the participation of States and hold public sessions in accordance with established procedures for intergovernmental bodies of the Commission on Human Rights.

I. BACKGROUND

25. Ten years have elapsed since the adoption of the Declaration on the Right to Development by the General Assembly of the United Nations in its resolution 41/128 of 4 December 1986.

26. After years of controversy and debate the right to development was recognized as an integral part of fundamental human rights.

27. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993, stressed the importance of the right to development as a universal and inalienable human right which should be treated by the international community, alongside other fundamental rights, globally in a fair and equal manner.

28. The Vienna Declaration and Programme of Action emphasized also that "democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing".

29. Despite overall global economic growth, 89 countries are worse off economically than they were 10 or more years ago. In 70 developing countries, levels of income today are less than in the 1960s or the 1970s. In the period 1975-1985, the global economy grew by 40 per cent but only a minority of countries benefited. During the same period, the number of poor people worldwide increased by 17 per cent. Thus, all the more today, it is important to realize the right to development.

30. At the end of the century the implementation of the fundamental human rights constitutes the challenge of a triple obligation for the States and the international community: the obligation to respect, to protect and to fulfil all human rights, including the right to development, in their indivisibility.

31. The evolution of the world situation brings new responsibilities to the international community: the globalization of the world economy, while providing new opportunities for all countries, has increased the complex challenges involved in interdependence and has increased the risk of instability.

32. World expansion of market rules provides a vision of the world in which competitiveness is the main criterion. There is a risk of marginalization of countries, groups and individuals that are not able to compete. New, powerful economic, financial and commercial forces at the international level are imposing their interests and could hamper the development of society as a whole.

33. Technological advances, especially in communication, information and biotechnology, are widening the gap between countries. At the same time, in too many countries poverty, even extreme poverty, is the fate of a major part of population.

34. An increase in violence and conflicts, illicit drug trafficking, organized crime, the exploitation of women and children, as well as the increased number of refugees and displaced persons, create new threats and suffering.

35. In this context, the international community has not yet found adequate responses. It should be emphasized that accumulation and persistence of those tendencies could pose serious threats to international peace and security.

36. So it is necessary to reaffirm that the implementation of the right to development should be regarded as a preventive approach to reduce violence and conflicts. Towards that goal the working group underlines the significance of international partnership for the realization of the right to development, based on dialogue and international cooperation.

37. Today, development has come to be widely understood as a multidimensional undertaking. To be sustainable, development should be a common goal of the international community and every society. For these

reasons, the working group stresses the necessity of giving a new dimension to development by reaffirming the validity of the right to development as contained in the Declaration on the Right to Development.

38. No nation could achieve these objectives on its own. They can only be achieved through global partnership and solidarity for the realization of the right to development based on dialogue, mutual understanding and international cooperation.

II. THE RIGHT TO DEVELOPMENT: MULTIDIMENSIONAL ASPECTS

Introduction and background

39. This section of the report deals with the issues, themes and aspects relating to the right to development.

40. The working group agreed that for working purposes it would address four broad categories of issues or themes: economic aspects; social aspects; cultural aspects; and civil rights and political aspects. The working group realizes that these broad areas are interrelated and indivisible.

41. For each of the issues, the working group has found it useful to take the following approach: (a) to deal with the content of the theme or problem; (b) to make references to commitments or obligations where they exist and where they are relevant and appropriate; (c) to examine the obstacles to dealing with the issue or to the realization of the right to development; and (d) to propose measures to remove such obstacles and to realize and promote the right to development.

42. In doing so, the working group will draw from and build on the work of previous working groups on the right to development and on other relevant reports, declarations and documents relating to the right to development.

43. In the consideration of issues, obstacles and measures, the working group is aware of its mandate to treat the right to development and its realization and promotion in its "integrated and multidimensional" context. It is also meant to be action-oriented, to "elaborate a strategy for the implementation and promotion of the right to development".

44. There are therefore two major aspects of the task of the working group:

(i) To produce proposals for a strategy and "concrete and practical measures" to implement and promote the right to development;

(ii) To do so in a balanced way in the context of the "integrated and multidimensional aspects" of the right to development, and in the context of the "integral and multidimensional concept of development".

45. In considering the issues and themes in this section, the working group has therefore striven to take a balanced and integrated approach. The working

group believes that the attainment of an appropriate balance would be a key factor for the successful elaboration of an effective strategy for the implementation and promotion of the right to development.

46. Although the right to development has been accepted and is evolving in a dynamic way, its realization is still far from satisfactory. One main reason is that there are still many obstacles to development and to the implementation of the right of development. New obstacles are emerging as well. These obstacles constitute structural blockages or root causes that prevent the realization of the right to development. At the same time, the protection and promotion of human rights is an essential element in the realization of the right to development.

47. Recognizing the need to deal with obstacles, the Commission on Human Rights in its resolution 1993/22 requested the previous working group to identify obstacles to the implementation and realization of the Declaration on the Right to Development and to recommend ways and means towards the realization of the right to development. The World Conference on Human Rights also requested the previous working group to formulate comprehensive and effective measures to eliminate obstacles to the implementation and realization of the Declaration on the Right to Development.

48. The previous working group identified several obstacles in four of its reports (on its first, second, third and fifth sessions). However it did not have time to elaborate a strategy on how to eliminate these obstacles.

49. The previous working group proposed in general terms different mechanisms to implement the right to development and monitor its implementation.

50. Implementation and realization of the right to development have to be accompanied by a process of eliminating the obstacles to development. In reaffirming the right to development, the Vienna Declaration and Programme of Action stipulates:

> "States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development."

51. In line with this approach, the working group has decided to look into obstacles to development and to the implementation and realization of the right to development, to formulate recommendations on how to eliminate these obstacles, and to propose "concrete and practical measures" as part of a strategy to implement and promote the right to development. Only by doing so would it be possible to monitor, through appropriate mechanisms, the implementation and realization of the right to development.

52. The working group also believes that respect for human rights in its multidimensional aspects is an essential element in the implementation and realization of the right to development. This is especially so because "the human person is the central subject of development", as stated in the

Declaration on the Right to Development. Development has to be human-centred. Thus, the protection and promotion of human rights should go hand in hand with the process of development.

Striving for balance, and an integrated and multidimensional approach

53. The working group realizes the importance of taking a balanced and comprehensive approach to the right to development. This is a key part of the group's mandate, which is to elaborate a strategy to implement and promote the right to development, as set forth in the Declaration on the Right to Development, "in its integrated and multidimensional aspects". Further, as article 9 of the Declaration stipulates, "all the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole".

54. In an attempt to attain balance, the working group is examining the social, economic, cultural and political aspects of the right to development. Moreover, the group is also taking into account both the national and international aspects of the right to development with respect to the elaboration of issues, obligations or commitments; the elimination of obstacles; and measures recommended for implementation.

55. The group believes on the one hand that the realization of the right to development requires an understanding of the complexities of the development process and the development problematic. In this context, human rights, and in particular the right to development, should be linked to this understanding and should support the implementation of measures to remove obstacles to development and to promote appropriate forms of development. The right to development should be rooted in the context of the development process and problematic. A major key to the realization and implementation of the right to development is the promotion of appropriate forms of development. It is thus critical to promote the conditions, at the national and international levels, required for development. As the Declaration on the Right to Development (art. 3) stipulates, "States have the duty to cooperate with each other in ensuring development and eliminating obstacles to development". Therefore, a large part of the measures proposed by the working group deal with eliminating obstacles to the development process, and with positive measures to promote development.

56. The group believes on the other hand that development is not only a process but also a right of all individuals, groups and peoples, a right that incorporates a wide range of aspects, including economic, social, cultural and political aspects. In the context of the right to development, human rights should be examined and measures be promoted to ensure that opportunities are given to all individuals to improve their well-being, and in relation to the promotion of appropriate forms of development, the process of which is a crucial part of the realization of the right of development. Human rights mechanisms and instruments are thus useful in promoting the development process. In this context the whole range of human rights are important, and individuals, groups and peoples, particularly from disadvantaged sections of societies, should be able to exercise their rights to participate meaningfully in and enjoy the benefits of development. Moreover, as sustainable

development requires appropriate political conditions, measures to promote such conditions are also crucial for realization of both development and the right to development. Also, as stated in the Vienna Declaration and Programme of Action, "while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights".

57. It is also recognized that the right to development has national and international dimensions. In striving for balance and an integrated and multidimensional approach, the working group places major importance on incorporating the national and international dimensions in an appropriate manner. The working group recognizes that development requires both appropriate national-level policies and conditions, and a conducive international environment that helps rather than hinders the national conditions. International mechanisms or structures can pose problems and obstacles, just as national policies and mechanisms can hinder development. The group will therefore attempt to deal with issues and problems at both the national and international levels, in a balanced and multidimensional way.

58. At the same time, the group also recognizes that States have obligations at both the national and international levels. The Declaration on the Right to Development stipulates that "States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development" (art. 3.1); "States have the duty to cooperate with each other in ensuring development and eliminating obstacles to development. States should fulfil their rights and duties in such a manner as to promote a new international economic order" (art. 3.3); and "States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development." States have obligations towards their own citizens and persons under their jurisdiction. At the same time, States have also made commitments and have obligations towards other States and to the international community. For example, more wealthy States have made commitments on the provision of aid to States and people in developing countries. In the examination of obligations and commitments, the group therefore advocates the examination of both national and international obligations of States and other actors.

59. The working group also discussed and considered the issue of the transboundary effects of national policies and practices on the economy, development and human rights of people in other countries. The working group also agreed to examine this aspect further in relation to possible adverse effects on human rights, in particular, the right to development and its realization. The transboundary effects of national practices or policies are recognized in the area of the environment and are being addressed. This concept and phenomenon should also be examined in the context of development, and the right to development, and as an instrument for arriving at a more concrete understanding of the linkages between the national and international dimensions of the right to development.

60. The working group also had a preliminary discussion of some characteristics of commitments relating to the right to development. It was observed that the right to development could also be defined by characterizing

the obligations of States and other actors. In this regard the working group noted a distinction between the obligations of conduct (passive or active) which point to behaviour which the duty-holder should follow or abstain from; and the obligations of result (which are less concerned with choice of the line of action to be taken, and more with the results which the duty-holder should achieve or avoid). The working group discussed the possibility that, as had been the case with other human rights, State responsibility for the realization of the right to development could be examined at three levels: the obligations to respect, to protect and to fulfil. The relevant reference for these concepts is the final report of Mr. Asbjørn Eide, Special Rapporteur of the Sub-Commission, on the right to adequate food as a human right (E/CN.4/Sub.2/1987/23).

61. In the discussion on this issue, it was pointed out by some members that the issue of commitments and obligations should be considered in conjunction with such other factors as: both national and international obligations of a State; the capacity of a State to implement its obligations, depending, for example, on its level of development and the availability of resources; national priorities and characteristics; the principle of "common but differentiated responsibilities", established during the UNCED process; the obligations also of non-State actors such as enterprises; and the need, and the challenge of attempting, to balance the competing rights in society of different individuals and groups. The working group agreed to discuss this issue in greater depth in the future.

Preliminary listing of issues and chart representation

62. During its first session the working group made a preliminary listing of issues connected with the economic, social, cultural and political aspects of the right to development. The list mainly comprises various issues that individual members of the working group proposed as being relevant to the right to development. The list also includes some issues that were suggested by government delegations and non-governmental organizations which were observers at the working group's meetings. Owing to the lack of time, it was not possible for an in-depth discussion of the various issues proposed. Thus, the inclusion of a particular item on the list does not imply that consensus was reached by the working group on whether it should be elaborated on further, or on the manner in which it should be dealt with.

63. Further, the working group agreed that the list of issues was not exhaustive.

64. Besides a simple listing of proposed issues, the working group did not have the time to produce further details on them. It is planned that these details will be provided in the report on the next session.

65. The working group acknowledges that certain issues are cross-cutting and belong to all categories.

66. The working group also agreed that in order to provide a useful working tool, the list of issues should be represented in the form of a chart. Besides the issue or theme, the chart would contain columns for references relating to the issue, the obstacles relating to the issue, and proposed

measures to deal with the issue. The working group felt that use of the chart could assist in the understanding of the current situation relating to aspects of the right to development, references, obstacles and measures. The chart is contained in Annex II to the present report. Only the issues column has been filled up in this chart, as the working group has not yet had the opportunity to discuss the content of the other columns.

III. PROPOSALS FOR MEASURES FOR THE IMPLEMENTATION AND PROMOTION OF THE RIGHT TO DEVELOPMENT FOR FUTURE CONSIDERATION

67. The proposals listed in this part of the present report constitute a survey of concrete and practical measures for the implementation and promotion of the right to development, as suggested by individual members of the working group in the course of its first session. These proposals have not yet been discussed, adopted or otherwise formally endorsed by the working group. The proposals are arranged so as to move from the international level to the national level, but the ordering does not imply any priorities. There were also other proposals or recommendations that, because of time constraints, it was not possible to include in this section. The working group therefore decided to consider the proposals in this section, and other proposals not yet included, at its next session.

68. International dialogue, with the Economic and Social Council mentioned as one possible forum, should be carried out with all parties to the development process and all actors involved in the implementation of human rights and the right to development. Another possible new forum suggested was a low-cost gathering for the discussion and coordination of action relating to the right to development and its implementation. The parties to such a dialogue should include States, United Nations institutions and agencies, regional organization and NGOs. They should build a coalition for human rights and the right to development.

69. An adequate response should be given to the threat that the issue of development or lack thereof poses to international peace and security. The international dialogue should therefore take place in a manner that incorporates the needs and interests of all parties, in order to avoid armed conflict. International cooperation should be designed to meet the challenge of implementation of the right to development as a preventive approach to international security. Positive references were also made to the evolution of minimum humanitarian standards applicable in all situations, including internal disturbances and tension and to the right to humanitarian assistance and obstacles thereto.

70. Dialogue on the right to development and internal peace should also take place at the national level with all parties concerned, with emphasis on social peace and social justice. Attention was drawn to the work of the Organization for Security and Cooperation in Europe (OSCE) in presidential or parliamentary round tables where representatives of Governments and groups sat down together, and to United Nations forums, such as the Working Group on Minorities and the Working Group on Indigenous Populations, where Governments and groups could engage in useful dialogue. References were made to ethnic conflicts, in support of the need for national dialogue of this kind.

71. The High Commissioner for Human Rights should pursue his contacts and coordination efforts with the World Bank, IMF and other development agencies and financial institutions with a view to their including human rights in their work, including incorporating human rights considerations and references to the implementation of the right to development in country strategic notes and country development programmes. The High Commissioner should take an active role in the promotion of the right to development. Reference was also made to the important roles of the Centre for Human Rights, ILO and other United Nations organs and organizations with regard to implementation.

72. A partnership for development should be forged in which developed and developing countries would undertake, in a framework of growing interdependence and joint responsibility, to establish sensible national policies and an international climate conducive to sustainable and accelerated development. Such cooperation would restore an appropriate balance between concern for economic efficiency and the need for social justice and equity.

73. To encourage the United Nations organs better to coordinate their action to promote and implement the right to development, including agenda items and action plans for right to development and human rights, exchange of data, indicators, country surveys and assessments, concerning for example education, children and the girl child.

74. Coordination should extend to the terminology used and for the building of bridges between good governance and anti-corruption with existing human rights standards. The right to development and human rights should be introduced into the policies and programmes of international institutions managing the economic world, so that they work towards measures establishing coherency between economic decisions and respect for human rights.

75. The treaty human rights bodies should be encouraged to integrate in their activities questions concerning the implementation of the right to development by addressing questions of structural impediments to the enjoyment of human rights for monitoring of which they are responsible in order to examine not only problems of legislative, administrative and other measures (action suggested: to encourage the treaty bodies to amend their guidelines for national reports, to exchange views with the Governments on these issues, and to formulate appropriate recommendations and general comments).

76. The consensus on the right to development, the existing norms of high moral and political value expressed in the Declaration on the Right to Development, the commitments undertaken by the World Conference on Human Rights and other international forums, as well as the recommendations and conclusions made by different expert groups and bodies give ground to consider the possibility of strengthening the obligations of States and of the international community as a whole through the preparation of a legal instrument. Several options are possible: optional protocols to the International Covenants on Human Rights, a specific convention on the right to development, or a framework convention on the right to development. Given the difficulties connected with the definition of the term "right to development" and its multidimensional character, it seems appropriate to consider drafting a framework convention, which could contain legally binding principles for directing the developmental policies of States, introducing or reconfirming

the human rights approach to development. Acceptance of this approach would reflect the dynamic nature of the evolution and implementation of the right to development.

77. A follow-up and monitoring mechanism should be created to review violations of the right to development at the national and international levels. Further elaboration of concrete operational mechanisms for the implementation of the right to development at the national and international levels is needed. A voluntary reporting system based on targets and objectives to be set by each State, taking into account its specific situation, should be further considered by exploring the possible indicators to measure the progress in the realization of the right to development.

78. Measures should be instituted to ensure the trading system does not lead to inequitable or more inequitable distribution among countries of benefits from development. In particular, measures should be instituted to ensure that less economically developed countries do not suffer losses from trade rules. The effects of trade rules on equity and on development prospects and options (especially of developing and the least developed countries) should be studied and, if necessary, the rules should be adapted to enable realization of the right to development. Concerns relating to social development, equity and the realization of the right to development should be major aspects in the design of present and future international trade rules.

79. New efforts should be made to overcome the problem of low and unstable prices of commodities from developing countries. Losses related to the deterioration in the terms of trade of developing countries should be addressed through new mechanisms.

80. Measures and mechanisms should be instituted to ensure an adequate net flow of financial resources to developing countries. In this regard, the reverse flow of resources from developing to developed countries should be addressed through concrete measures.

81. Developed countries should meet their commitment to provide at least 0.7 per cent of their GDP as aid to developing countries, which was renewed at the United Nations Conference on Environment and Development. A monitoring mechanism should be established in the United Nations system to ensure that this commitment is met. The recent decline in the volume of aid has to be reversed urgently.

82. The content and quality of aid should be improved. In particular, a larger share of aid should be targeted at the eradication of poverty and promotion of social development and sustainable development.

83. The quality of the absorption of the aid in the receiving country should be addressed, taking into account, inter alia, respect for and implementation of human rights.

84. The international community should adopt more effective measures to resolve the external debt problem of developing countries. There should be an

initiative for a comprehensive (rather than a piecemeal) resolution of this problem, covering commercial, bilateral and multilateral debt, and also involving reduction of debt stock.

85. The content of and procedures for structural adjustment programmes and policies should be reviewed in terms of their effects on development possibilities and options and on the realization of the right to development. A mechanism should be set up to ensure that these concerns are effectively taken into account in the design of such programmes, and that factors that are important for development be promoted in such programmes. Countries that have to implement such programmes should have the opportunity and right to participate effectively in the drawing up of the programmes. The role of organizations of civil society is also important in this regard.

86. Measures should be taken to address the growing influence and impact of transnational corporations, especially in terms of ethical behaviour; effects on the environment, health and safety; culture; technology transfer; development and social objectives and priorities; effects on local firms and sectors, the domestic economy and the resources of the local population; and the right to development. A working group should be set up within the United Nations to address these issues.

87. A working group should be established to examine inequities and imbalances in international economic relations and structures and to propose measures to deal with these.

88. An effective mechanism should be established to coordinate macroeconomic policies at the global level so as to ensure the needs and rights (especially the right to development) of developing countries are fully taken into account.

89. Measures should be taken to ensure that human rights (and in particular selective interpretation or application of them) should not be made use of as an instrument of trade protectionism or of leverage for narrow economic or commercial ends, or to constrain unfairly the legitimate development programmes of countries.

90. Measures should be taken to address fears of human rights being used in a selective or unfair manner as a conditionality for aid, loans or trade, which then unduly influences the imposition of particular policies on dependent or recipient countries, thereby affecting the right to development.

91. Measures should be taken to prevent the introduction and use of unrelated, irrelevant and inappropriate issues by more powerful countries as a means of gaining advantage in global trade and investment, or as unfair leverage in imposing inappropriate conditions and policies on dependent countries.

92. Measures should be explored to counter the adverse transboundary effects of national policies on the human rights, development or right to development of peoples in other countries. Elimination of coercive economic measures and extraterritorial application of domestic laws.

93. A working group or other mechanism should be set up to examine the imbalance in decision-making powers between developed and developing countries and between major and smaller nations in decision-making in global issues (political, economic and social and cultural) and institutions, such as the Bretton Woods institutions, the World Trade Organization, the Security Council and other United Nations bodies. This examination should include an analysis of the rules of decision-making, and steps should be taken to increase the capacity of developing countries to participate in negotiations and decision-making through the provision of financial and other resources.

94. A commission or working group should be established to examine and take measures to counter the adverse effects of globalization and liberalization on the development prospects or human rights condition of people, especially in weaker countries.

95. Peace dividend resources should be allocated to comprehensive development in developing countries.

96. There should be international cooperation to fight drug-trafficking.

97. There should be international cooperation to fight trafficking in women and children, sexual exploitation and prostitution.

98. There should be international cooperation to eliminate child labour.

99. There should be commitment on the part of Governments and civil societies to the genuine promotion and achievement of participatory democracy, sustainable development, respect for human rights and fundamental freedoms and for the rule of law based upon a nationwide legitimization (action proposed: reports by Governments and NGOs on the impediments to the implementation of these objectives and to the formulation and implementation of the right to development).

100. Structures and mechanisms, including tripartite ones, should be established and developed for the active participation of the entire population in the process of consultation, drafting and implementation of development programmes. The resolutions or recommendations of the United Nations and ILO concerned with establishing and developing national institutions and procedures for the promotion and protection of human rights constitute commendable guidelines (action suggested: reports on whether such institutional and procedural frameworks have been set up, and if so, whether they have become viable devices).

101. Local, regional and national programmes for development should be adopted with the participation of the civil societies, not only Governments (action suggested: reports on domestic action in this field).

102. Domestic legislation on the principles and procedures for ensuring local, regional and national development programmes should be adopted (action suggested: reports on domestic legislation in this field).

103. States should ratify human rights treaties, reconsider the validity of reservations made to those treaties, accept the monitoring mechanisms and

procedures, and cooperate with the international monitoring bodies for the further promotion and protection of human rights and fundamental freedoms (action suggested: recommendations to Governments that have not yet ratified specific treaties to consider their readiness to do so and, otherwise, to identify the obstacles in this regard).

104. The right to development and its implementation should be reflected in national law and national mechanisms, the necessary legal and constitutional reforms instituted and national institutions set up to ensure direct national applicability of all human rights instruments and the Declaration on the Right to Development.

105. Multidisciplinary teams should work on the implementation of the right to development, drawing on national consensus on development and bearing in mind human rights.

106. National coordinating committees for human rights should be set up.

107. National institutions must be set up and/or strengthened for the promotion and protection of all human rights, especially the core human rights. National judges should be obliged to apply international human rights law.

108. If the necessary resources are not available for the implementation of a ratified convention, for example an ILO convention, technical assistance should be made available.

109. Political participation, participating democracy, freedom of the press, and access to decision-making were stressed, as was decentralization at the national level.

110. It was suggested that corruption should be made punishable in national law and that affected individuals and groups should be able to submit complaints on this issue when needed to both national and international bodies. Such petition procedures should also be available in cases of alleged nepotism.

IV. CONCLUSIONS

111. The working group entrusted its Chairman with compiling, with the help of the secretariat, information on work undertaken in the United Nations system on indicators for development and human rights and on early warning mechanisms and methods, in order to facilitate the future work of the working group.

112. Mr. C.T. Thiam, expert member of the working group, was entrusted with the preparation of a study on the promotion and implementation of the right to development by the African Commission on Human and Peoples' Rights, in line

with the relevant provision of the African Charter of Human and Peoples' Rights, taking into account all relevant activities of the Organization of African Unity. The working group requested the secretariat to enable Mr. Thiam to attend the next session of the African Commission in order to facilitate his work and that of the working group.

113. The working group felt it necessary to hold an additional two-week session in 1997 in order to be able to implement its mandate properly. Therefore, it requests the Commission on Human Rights to consider this recommendation for an additional session.

Annex I

LIST OF DOCUMENTS

Documents prepared for the session

E/CN.4/AC.45/1996/1	Provisional agenda

Background and reference documents

E/CN.4/1990/9/Rev.1	Report prepared by the Secretary-General pursuant to Commission on Human Rights resolution 1989/45
E/CN.4/1994/21 and Corr.1 (and 2 - French only)	Report of the Working Group on the Right to Development on its first session
E/CN.4/1995/11	Report of the Working Group on the Right to Development on its second session
E/CN.4/1995/25 and Add.1 and 2	Report of the Secretary-General submitted pursuant to Commission on Human Rights resolution 1994/11 and addenda
E/CN.4/1995/27	Report of the Working Group on the Right to Development on its third session
E/CN.4/1995/43	Human rights and unilateral coercive measures: report of the Secretary-General
E/CN.4/Sub.2/1995/10	Preliminary set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights. Report of the Secretary-General prepared in pursuance of resolution 1994/37
E/CN.4/Sub.2/1995/11	The relationship between the enjoyment of human rights, in particular international labour and trade union rights, and the working methods and activities of transnational corporations. Background document prepared by the Secretary-General
E/CN.4/Sub.2/1995/14	Preliminary report on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution, prepared by Mr. José Bengoa, in conformity with resolution 1994/40 of the Sub-Commission and decision 1995/105 of the Commission on Human Rights

E/CN.4/Sub.2/1995/19	Interim report on opposition to the impunity of perpetrators of human rights violations (economic, social and cultural rights), prepared by Mr. El Hadji Guissé, Special Rapporteur, pursuant to Sub-Commission resolution 1994/34
E/CN.4/1996/10	Report of the Working Group on the Right to Development on its fourth session
E/CN.4/1996/17	Preliminary report on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, submitted by Mrs. Fatma Zohra Ksentini, Special Rapporteur, pursuant to Commission resolution 1995/81
E/CN.4/1996/22	Report of the Secretary-General on ways and means to carry out a political dialogue between creditor and debtor countries in the United Nations system, based on the principle of shared responsibility
E/CN.4/1996/24	Report of the Working Group on the Right to Development on its fifth session
E/CN.4/1996/25	Report of the Secretary-General submitted pursuant to Commission resolution 1995/17
E/CN.4/1996/45 and Add.1	Report of the Secretary-General on human rights and unilateral coercive measures
E/CN.4/Sub.2/1996/12 and Corr.1	Report of the Secretary-General on the impact of the activities and working methods of transnational corporations on the full enjoyment of all human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing international guidelines, rules and standards relating to the subject-matter
E/CN.4/Sub.2/1996/13	Final report on human rights and extreme poverty, submitted by the Special Rapporteur, Mr. Leandro Despouy
E/CN.4/Sub.2/1996/14	Provisional report on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution, prepared by Mr. José Bengoa, Special Rapporteur

E/CN.4/Sub.2/1996/15	Second interim report on the question of the impunity of perpetrators of human rights violations, prepared by Mr. El Hadji Guissé, Special Rapporteur
A/CONF.166/9	Report of the World Summit for Social Development
CRC/C/54	Report on the twelfth session of the Committee on the Rights of the Child
CERD/C/49/CRP.2/Add.7	Draft report of the Committee on the Elimination of Racial Discrimination to the General Assembly. Rapporteur: Mr. Andrew R. Chigovera
E/CN.4/Sub.2/1992/16	Final report submitted by Mr. Danilo Türk, Special Rapporteur on the realization of economic, social and cultural rights
E/CN.4/Sub.2/1991/17	Second progress report prepared by Mr. Danilo Türk, Special Rapporteur on the realization of economic, social and cultural rights
A/CONF.157/23	Vienna Declaration and Programme of Action
E/1996/22 E/C.12/1995/18	Report on the twelfth and thirteenth sessions of the Committee on Economic, Social and Cultural Rights
A/CONF.171/13	Report of the International Conference on Population and Development (Cairo, 5-13 September 1994)

Annex II

CHARTS RELATING TO ASPECTS OF THE RIGHT TO DEVELOPMENT

PRELIMINARY LIST OF ISSUES RELATING TO ECONOMIC ASPECTS OF THE RIGHT TO DEVELOPMENT			
Issues	References	Obstacles	Proposed measures
A. International level			
1. Trade relations, rules, practices and systems, unequal trade			
2. Financial resources and overall flows			
3. Aid resources and quality			
4. External debt			
5. Structural adjustment programmes			
6. Transfer of technology			
7. Transnational corporations			
8. Inequities and imbalances in international economic structures			
9. International coordination of macroeconomic policies			
10. Sovereign right of nations over their natural wealth and resources			
11. Environmental protection and sustainable development			
12. The need to provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare			
13. International cooperation for development			
14. Unilateral coercive economic measures			
15. Globalization, liberalization and marginalization			
16. Role of international financial institutions			

Issues	References	Obstacles	Proposed measures
B. National level			
1. Poverty eradication			
2. Inequities and imbalances			
3. Appropriate macroeconomic policies and options			
4. Public spending patterns			
5. Right to property			
6. Land distribution and land reform			
7. Land rights and resources for indigenous peoples			
8. Role and rights of trade unions			
9. Role of NGOs			
10. Popular participation in economic development			
11. Corruption			
12. Right of the State to plan development policies (including investment regulation, protection of balance of payments, trade and sector policies)			

PRELIMINARY LIST OF ISSUES RELATING TO SOCIAL ASPECTS OF THE RIGHT TO DEVELOPMENT			
Issues	References	Obstacles	Proposed measures
1. Social needs, facilities and rights relating to health			
2. Needs, facilities and rights relating to housing			
3. Needs, facilities and rights relating to education			
4. Needs and rights relating to food and food security			
5. Employment and livelihoods			
6. Migration and migrant workers			

Issues	References	Obstacles	Proposed measures
7. Refugees and asylum seekers			
8. Trafficking in children and women			
9. Traffic in human organs			
10. Traffic in child pornography			
11. Commercial sexual exploitation of children			
12. Issues relating to social alienation, (e.g. crime, violence, drugs)			
13. International drug trafficking and related effects on financial flows, economy and society			
14. Social and racial discrimination			
15. Vulnerable groups (disabled, homeless, jobless, etc.)			
16. Internally displaced people			
17. Social dimensions and effects of technology and new technologies			
18. Social effects of globalization and liberalization (e.g. on health)			
19. Transboundary movement of toxic and hazardous wastes and products and implications for right to life and health			
20. Other environmental problems and issues			
21. International cooperation for social development			
22. Women's empowerment			
23. Protection of children and families			
24. "Structural violence"			

PRELIMINARY LIST OF ISSUES RELATING TO CULTURAL ASPECTS OF THE RIGHT TO DEVELOPMENT			
Issues	Reference	Obstacles	Proposed measures
1. Education			
2. Language, illiteracy			
3. Human rights education			
4. Media (including effects of monopoly)			
5. New information and communications technologies			
6. Respect for cultural diversity and local and national cultures			
7. Right of each individual, group and nation to preserve and practise their own culture			
8. Cultural rights of minorities			
9. Protection of indigenous and local knowledge systems and cultures			
10. Protection of cultural heritage of humankind			
11. Desecration of holy places			
12. International cooperation for cultural development			
13. Traditional practices affecting women's health			
14. Cultural rights of indigenous peoples and minorities			

PRELIMINARY LIST OF ISSUES RELATING TO POLITICAL ASPECTS AND CIVIL RIGHTS ASPECTS OF THE RIGHT TO DEVELOPMENT			
Issues	References	Obstacles	Proposed measures
National level			
1. Political factors linked to government: Open, transparent and accountable government; Absence of corruption and nepotism; Popular participation in the development process; Good governance			
2. Democracy			
3. The rule of law, in line with respect for fundamental rights and freedoms			
4. Equality and non-discrimination before the law, right to equal protection of the law			
5. Due process, fair trial and independence of the judiciary			
6. Freedom of the press			
7. The right to vote and to be elected			
8. Non-discrimination in employment and occupation and prohibition of forced and compulsory labour			
9. Freedom of movement, and the right not to be expelled from one's own country			
10. Freedom of association and freedom of assembly			
11. Freedom of thought, opinion and expression			
12. Genocide			
13. Inequities in capacities of the wealthy and the poorer or weaker groups to influence policies and decision-making			
14. The need to recognize and promote the rights of the poor and disadvantaged groups (including their right to protect their interests)			

Issues	References	Obstacles	Proposed measures
15. Need for stable social order as a condition for development			
<u>International level</u>			
1. Respect for fair and democratic behaviour and principles at the international level			
2. The obligation of States faithfully to respect and implement their obligations under international law			
3. The right of peoples to self-determination			
4. Non-interference in other countries' internal affairs			
5. Inequities in capacity or rights of developing countries to participate in or influence policies and decision-making in international forums and institutions			
6. Freedom from foreign occupation or domination			
7. Extraterritorial application of domestic law			
8. National sovereignty over natural wealth and resources, and decision-making over their use			
9. Transboundary human rights effects of national policies			
10. Disarmament and allocation of peace dividend resources for comprehensive development			
11. International cooperation for humanitarian assistance			
12. International cooperation in the prevention of conflicts			
13. Revitalizing the role of the United Nations			

Annex III

CONTRIBUTIONS FROM INDIVIDUAL MEMBERS

Proposals on legal characteristics of commitments, submitted by the Chairman, Mr. K. Drzewicki

1. The right to development, like other human rights, constitutes a relationship between the individual and groups on the one hand, and the State on the other. The right to development has also an international and national dimension. As the Vienna Declaration and Programme of Action emphasized States "should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development" (para. I.10).

2. The right to development needs to be more precisely defined not only through identification of its content but also through characterization of the corresponding obligations of States. In order to achieve these ends, and guided by the spirit of the integrative approach to all human rights, including the right to development, it was felt pertinent to refer to a conceptualization of human rights and corresponding obligations of States, which has already been elaborated in United Nations studies and discussions, widely accepted and endorsed by the various human rights bodies. The conceptualization, which the experts refer to, is contained in the final report by Mr. Asbjørn Eide, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled "The right to adequate food as a human right" (see Human Rights Study Series, No. 1, 1989, paras. 39-77).

3. The right to development has been largely formulated both as broad obligations of result and obligations of conduct by States. The obligation of conduct (passive or active) points to the behaviour, which the duty-holder should follow or abstain from (for example, not to torture). The obligation of result is less concerned with the choice of the line of action taken, but more concerned with the results which the duty-holder should achieve or avoid (for example, elimination of the occurrence of hunger).

4. As it has been the case with other human rights, State responsibility for the realization of the right to development can be examined at three levels: the obligation to respect, the obligation to protect, and the obligation to fulfil.

5. The obligation to respect requires the State, and thereby all its organs and agents, to abstain from doing anything that violates the integrity of the individual or infringes on his or her freedom, including the freedom to use the material resources available to that individual in the way he or she finds best to satisfy basic needs. In this context, we should remember the indivisibility of human rights: The right to development cannot stand alone, but depends also on the respect for fundamental freedoms.

6. The obligation to protect requires of the State and its agents the measures necessary to prevent other individuals or groups from violating the integrity, freedom of action or other human rights of the individual, including prevention of infringement of his or her material resources.

7. The obligation to fulfil requires the State to take the measures necessary to ensure to each person within its jurisdiction opportunities to obtain satisfaction of those needs, recognized in the human rights instruments, which cannot be secured by personal efforts.

Proposals concerning chapter III, submitted by the expert member from Senegal, Mr. C.T. Thiam

Proposals for the drafting of chapter III of the report on measures for the implementation and promotion of the Declaration on the Right to Development

I. GENERAL COMMENTS

1. The recommendations to be made in this chapter have to take account of the national and international dimensions of the right to development. This overall approach to the right to development also has to reflect the indivisibility of all of the rights covered by the right to development. Consequently, if the proposals are to apply both at the international level and at the national level, they must be articulated in such a way that those to be implemented at the international level have a counterpart in the standards and mechanisms designed to be applied in the internal system of States.

II. CONTENT OF THE PROPOSALS

2. For the sake of convenience, the present proposals will be considered from both the international and the national points of view and will deal successively with the legal and practical aspects of the implementation and promotion of the right to development.

A. At the international level

(1) Legal aspects

3. It has to be determined how the right to development can be specifically included in the applicable human rights texts, especially the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The inclusion of the right to development would give it more weight in legal terms because the instruments in question are binding in nature and it would expand the terms of reference of the bodies set up under these treaties, i.e. the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, especially in respect of the reports received from States and the questions put to States.

4. The right to development must also be included in the basic texts which establish, or govern the activities and projects of, United Nations organizations, organs and bodies, as well as international organizations whose mandate relates to the right to development.

5. The Bretton Woods institutions (World Bank and IMF) should take account of the right to development in their guiding principles, decision-making criteria and programmes. The same is true of NGOs which work at the international and national levels and whose activities relate to human rights, development and democracy. From this point of view, the ties between the World Bank and the IMF, on the one hand, and the United Nations General Assembly and the Economic and Social Council, on the other, should be strengthened. The IMF and the World Bank should be required to submit regular

reports to the General Assembly and the Economic and Social Council to keep them informed of the extent to which these institutions are taking account of the right to development in their programmes and activities.

(2) Practical aspects

6. These aspects relate to a variety of requirements and areas.

(a) Coordination requirement

7. Close coordination must be established between United Nations bodies and organizations and the specialized agencies with regard to the implementation and promotion of the right to development and, in particular, the implementation of the Declaration on the Right to Development; and the role and resources of the Centre for Human Rights have to be strengthened in the fields of cooperation, assistance and studies relating to the right to development. In this connection, the Centre has to develop and consolidate a specific branch for the promotion and implementation of the right to development.

(b) Promotion requirement

8. It is important to consider the possibility of implementing a broad information, training, popularization and education programme on the right to development and to entrust the implementation of such a programme to the Centre for Human Rights; and to support and coordinate efforts to include the right to development in more school curricula, particularly at higher levels. In this connection, consideration must be given to the possibility of drafting and distributing a handbook and pamphlets, including a fact sheet on the right to development.

(c) Dialogue and cooperation requirement

9. The aim will be to encourage, establish and provide support for international cooperation and a genuine partnership for dialogue with a view to the implementation and promotion of the right to development; and to establish a forum for dialogue and discussion by all the actors and institutions whose mandates and areas of activity relate to the exercise of the right to development by their beneficiaries. Such a forum and other appropriate instruments might be based on a framework convention containing flexible rules whose primary objective is to create the appropriate dynamics aimed at the implementation and ongoing consolidation of an international economic environment leading to the exercise by all nations of the right to development and to genuine international peace and security.

(d) Specific areas

10. With a view to debt relief, debt negotiations have to take account of the social aspects of development and the implications of the Declaration on the Right to Development; the institutions involved in the design and implementation of structural adjustment programmes together with the countries concerned have to take account of the social and cultural dimensions of development and the establishment of the necessary conditions for the full exercise of the right to development; consideration has to be given to the

possibility of close cooperation between the actors involved with a view to the appropriate use, from the standpoint of development assistance, of the financial spin-off from a genuine disarmament effort; the quality of assistance has to be improved and a pressing appeal has to be made to developed countries to achieve the minimum target of 0.7 per cent of GDP for development assistance as rapidly as possible; support must be provided for the efforts being made to get transnational corporations fully to respect the requirements and implications of the right to development; in this connection, consideration should be given to the timely adoption of an appropriate instrument on the rules governing the activities of such corporations and to encouragement for the work being carried out on the drafting and adoption of a code of conduct on transnational corporations; the ongoing discussion on the question of how to deal with violations of economic, social and cultural rights must be borne in mind in order to ensure the full implementation of such rights; ways and means must be found to ensure transfers of technology, including high technologies and micro-technologies, for the benefit of developing countries; the adoption of unilateral enforcement action and protectionist measures contrary to the full exercise by developing countries of the right to development must be discouraged; and the establishment of conditionality for assistance and economic and trade relations which might affect the exercise by countries of their right to development must also be discouraged.

(e) Follow-up machinery

11. It will be important to establish follow-up machinery for the implementation of the Declaration on the Right to Development, as well as the implementation and promotion of the right to development. Such machinery must be based on a structure which already exists or is to be created and whose role is to identify useful information and to collect all relevant data at the international and national levels on the full implementation of the right to development, to be used as appropriate. The use of such data will be based on pre-determined (and changing) threshold values designed to set off the appropriate warning devices. Such devices will make it possible to adopt or suggest measures (specific information to be provided, specific advice and suggestions for the actors involved: Governments, international and regional organizations, specialized agencies, United Nations bodies and non-governmental organizations), including assistance and appropriate action; to design the functions of the machinery whose establishment is suggested so that they may be performed by one or more structures such as the Committee on Economic, Social and Cultural Rights, the Centre for Human Rights and the Commission on Human Rights of the United Nations.

B. At the internal level

(1) Legal aspects

12. The aim is: (a) to encourage States which have not yet done so to express their consent to be bound by human rights instruments and to withdraw any reservations they might have formulated to such instruments if such reservations are likely to affect the exercise of the right to development; (b) and to encourage States to consider legislative and constitutional changes

(when their legal system so permits) which are designed to guarantee that treaty law takes precedence over internal law and that treaty provisions are directly applicable in the internal legal order.

(2) Practical aspects

13. These aspects involve two requirements.

(a) Coordination requirement

14. It will be important to suggest that States should consider establishing or strengthening structures for the coordination of government work in order consistently to take account of concerns and commitments with regard to human rights in general and the right to development in particular; to encourage and support national human rights organizations so that they will take sufficient account of the right to development in their activities; and to encourage these national organizations to work in close cooperation on the implementation of the Declaration on the Right to Development.

(b) Promotion requirement

15. The aim will be to encourage and support the activities of non-governmental organizations and human rights organizations for the promotion of the right to development, particularly through human rights information, training and education activities and the popularization, publishing, distribution and translation into languages accessible to the largest possible number of persons of leaflets on the right to development; to suggest that States should include the study of human rights in general and of the right to development in particular in official curricula at all levels.

(3) Political aspects

16. States have to display more political will with regard to fuller respect for human rights and the implementation of the right to development.

17. States have to commit themselves to guaranteeing and respecting the principles of the rule of law, which must, from a non-formalistic standpoint, include respect for fundamental rights and freedoms, the independence of the judiciary and equal access for all to the system of justice.

18. States have to commit themselves to guaranteeing and respecting all democratic principles and to building and consolidating a system of democratic government in which all rights are respected, including the right to development as it is exercised by all beneficiaries: individuals, groups and peoples.

Comments on the proposed cooperation between the human rights programmes and the World Bank submitted by the expert member from Malaysia, Mr. Martin Khor

1. In his opening speech, the High Commissioner for Human Rights informed the working group that he and his officials had held a high-level meeting with World Bank officials.

2. On 6 November 1996, the working group also had a briefing from the High Commissioner's Senior Advisor, who informed the session that the World Bank and the human rights programme of the United Nations would have a programme of cooperation and collaboration in areas such as the preparation of country projects, the exchange of information, cooperation between officers in the field, and building national capacity for the rule of law and human rights. The World Bank was also willing to support the regional seminars on the right to development planned by the High Commissioner. In addition, it was hoped that the World Bank would provide support to the human rights treaty bodies. It was also hoped that the United Nations human rights programme would assist in incorporating a human rights component in World Bank policies. He also said that country projects were being planned with a view to technical cooperation to develop national capacity for the rule of law, governance and democracy.

3. During this briefing session and at subsequent sessions as well, a number of participants, including NGOs, some delegations and myself, raised some concerns regarding the collaboration between the World Bank and the human rights programme. This is because the international financial institutions (including the World Bank) have been identified as themselves being obstacles to the realization of the right to development, and of economic, social and cultural rights, owing to the effects of their structural adjustment policies.

4. The Commission on Human Rights, in its resolution 1993/14, requested the Secretary-General to prepare basic policy guidelines on structural adjustment and economic, social and cultural rights which could serve as a basis for a continued dialogue between human rights bodies and the international financial institutions.

5. An open-ended working group of the Commission on Human Rights to formulate basic policy guidelines on structural adjustment and economic, social and cultural rights has also been established and will be meeting in March 1997.

6. The reports of Danilo Türk, Special Rapporteur of the Sub-Commission on the realization of economic, social and cultural rights, especially the final report (E/CN.4/Sub.2/1992/16), contain a wide-ranging analysis of how structural adjustment programmes have had negative effects on a range of human rights.

7. Many independent experts and NGOs have also identified the structural adjustment policy package as a major cause of the deepening of poverty and deterioration in social and living conditions in many developing countries in the past two decades.

8. The Social Development Summit of 1995, recognizing the negative social effects of structural adjustment, undertook commitments in its Declaration to re-examine these policies.

9. In view of the above, the human rights bodies and officials have to be extremely sensitive when they initiate dialogue, let alone cooperation and collaboration in activities, with the World Bank.

10. The Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities have asked the human rights bodies to prepare basic policy guidelines on structural adjustment as a basis for dialogue with the international financial institutions.

11. Thus, the major aspect of relations between the human rights bodies and the World Bank, at this stage at least, should be a dialogue on the human rights implications of its policies, and on the need for it to reconsider its policies in view of their negative effects.

12. It would be premature to enter into an agreement on general cooperation and collaboration with the World Bank at this stage, before the guidelines on structural adjustment are finalized, and before the dialogue with it on how to deal with or eliminate the obstacles posed by its policies to the realization of human rights, including the right to development.

13. I share the concerns expressed by other participants at this session that the human rights bodies and their representatives should retain an independent position from which to relate critically with the World Bank in relation to the human rights implications of its policies, particularly structural adjustment.

14. To enter a collaborative relationship now, before the dialogue on structural adjustment and human rights has begun or concluded, would be premature. Moreover, should the World Bank be asked to support the programmes and activities of the human rights bodies, this would put into question the independent position that they should have in relation to the international financial institutions and the human rights implications of their policies.

15. An additional concern is the nature of collaboration that is planned between human rights officials and World Bank officials. What kind of information exchange, and what kind of "cooperation in the field" are planned? In the planning of joint country projects to develop national capacity for governance issues and democracy are guidelines on these issues being drawn up, and how are they to be chosen? The World Bank has the leverage to impose conditionality for its loans. If human rights conditionalities are being planned, the interpretation and definition of these rights, and the combination of rights, and the principles of "good governance" and "democracy", in the context of implementation of development policies and processes, should first be clarified. Moreover, as raised by one of the experts, to what extent are the representatives of countries that borrow from the World Bank able to influence, define or determine the nature of this collaboration between the human rights bodies and the World Bank? To what extent can the members of the human rights organs also influence the proposed collaboration?

16. Given these concerns, I have serious reservations and am unable to associate with one of the measures proposed by a member of the working group that "the High Commissioner for Human Rights should pursue his contacts and coordination efforts with the World Bank, IMF and other development agencies and financial institutions with a view to their including human rights in their work, incorporating human rights considerations and references to the implementation of the right to development in country strategic notes and country development programmes" (para. 71 of the report).

17. The working group has clarified in its progress report that the proposals listed in the report have been suggested by individual members and have not yet been discussed or adopted by the working group. It is expected that the working group will discuss the proposals at its next session.

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